

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. _____

JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Respondent.

**PETITION FOR A WRIT OF
MANDAMUS**

**EMERGENCY RELIEF
REQUESTED**

The Honorable Jefferson Griffin, judge of the North Carolina Court of Appeals, petitions this Court to issue a writ of mandamus to the State Board of Elections. Judge Griffin is a candidate for Seat 6 on the Supreme Court of North Carolina. That Board has assumed jurisdiction over three categories of election protests that Judge Griffin has filed. However, the Board is unreasonably delaying a decision on these protests. A decision is required immediately so that any aggrieved party can seek judicial review—which is certain to occur given the outcome-determinative nature of the protests at issue. By delaying a decision on these protests, a winner of the election cannot be certified. And the delay in certifying a winner undermines the public’s trust in the electoral process.

Judge Griffin, therefore, respectfully requests that the Court immediately issue a writ of mandamus to the State Board of Elections. Judge Griffin asks the Court to issue an order on this mandamus petition no later than 9 December 2024.

PARTIES, JURISDICTION, AND VENUE

1. The Honorable Jefferson Griffin is a judge on the North Carolina Court of Appeals. He is the Republican candidate in the 2024 general election for Seat 6 of the Supreme Court of North Carolina.

2. The Honorable Allison Riggs currently holds the office of Seat 6 of the Supreme Court of North Carolina. Justice Riggs is the Democratic candidate for that office in the 2024 general election.

3. The State Board of Elections (the “Board” or “Respondent”) is an administrative agency with the legal duty to certify electoral winners from the 2024 general election.

4. The superior courts of this state have the power to issue remedial writs to any lower tribunal over which the superior court has appellate jurisdiction.

5. By statute, Wake County Superior Court has appellate jurisdiction over a “final decision of the State Board of Elections on an election protest.” N.C. Gen. Stat. § 163-182.14.

6. The Board is being served with a summons and the petition pursuant to Rule 4(j)(3). Justice Riggs’s counsel will also receive a copy of this petition.

BACKGROUND

7. On the evening of Election Day 2024, Judge Griffin maintained a sizeable lead over his opponent, Justice Allison Riggs. However, as ballots continued to be counted over the next week, Justice Riggs took the lead in the votes.

8. On 19 November 2024, Judge Griffin filed election protests in each of North Carolina's 100 counties. In total, Judge Griffin filed six categories of election protests. However, only three categories of protests are relevant here. Those three relevant categories are described briefly below.

9. *Incomplete Voter Registrations.* Since 2004, the General Assembly has required someone registering to vote to provide his drivers license or last four digits of his social security number on his voter registration application. N.C. Sess. Law 2003-226, § 9 (amending N.C. Gen. Stat. § 163-82.4). However, until December 2023, the State Board of Elections failed to enforce this law. And even when the Board admitted its decades of lawlessness, it refused to cure the improper registrations, and only began requiring the information from new registrants. In the Supreme Court contest, over 60,000 people cast ballots who had never provided the statutorily required information to become lawful voter registrants. Under state law, unless someone is lawfully registered to vote, he cannot vote. N.C. Const. art. VI, § 3(1); N.C. Gen. Stat. § 163-82.1(a).

10. *Never Residents.* Our state constitution limits voters for state offices to people who actually reside in North Carolina. N.C. Const. art. VI, § 2(1); *Bouvier v. Porter*, 386 N.C. 1, 4 n.2, 900 S.E.2d 838, 843 n.2 (2024) (explaining that “nonresidents” are “categorically ineligible to vote” for state offices). Nonetheless, the State Board allowed approximately 289 people to vote in the protested election who have never resided in North Carolina or anywhere else in the United States. These voters self-identified themselves as such,

stating on a form “I am a U.S. citizen living outside the country, and I have never lived in the United States.” Counting these ballots is unlawful.

11. *No Photo ID*. It’s well known that photo identification is required for all voters, both those voting absentee ballots and those voting in person. N.C. Gen. Stat. § 163-230.1(a)(4), (b)(4), (e)(3), (f1) (absentee ballots); *id.* § 163-166.16(a) (in-person voting); N.C. Const. art. VI, §§ 2(4), 3(2) (same). Yet the State Board decided not to require photo identification for absentee ballots cast by voters who live overseas. State law, however, doesn’t exempt overseas voters from the photo-identification requirement. Thousands of such ballots were unlawfully cast in the election.

12. After Judge Griffin filed his protests, the State Board took over jurisdiction from the county boards for the three categories of protests just described. The Board then entered a briefing schedule for these protests. Per that schedule, Judge Griffin filed his brief on 27 November, and other parties, including Justice Riggs, were ordered to file responsive briefs on 6 December 2024. A copy of this order from the State Board is attached as Exhibit A.

13. On 2 December 2024, Judge Griffin moved the Board to issue a final decision on the protests before it on an expedited basis. In his motion to expedite, Judge Griffin requested that the Board render its decision no later than Monday, 9 December 2024. A copy of this motion is attached as Exhibit B.

14. Instead of ruling on the motion to expedite, the Board instead set a hearing on the election protests for 11 December 2024, two days after Judge Griffin had requested

a *decision* on the protests. A copy of that (informal) notice of hearing is attached as Exhibit C. That notice constituted a denial of Judge Griffin's motion to expedite, since the Board set arguments for a date after which Judge Griffin had requested a final decision.

15. In the interest of expediency, Judge Griffin (as well as the other candidates who filed protests) waived oral argument and elected to rely on the arguments set forth in their briefs. A true and accurate copy of those communications is included in Exhibit C.

16. Mandamus is appropriate when issued to command a lower tribunal to perform its duty in a timely manner. That's especially true when, as here, there is no other remedy provided by law.

17. A disputed election to our state's highest court is itself an exceptional circumstance of immense public interest. A speedy determination of that contest is not just important to the candidates, but is critical to the public's trust in the electoral process itself. Everyone has a strong interest in the fair and speedy determination of election results.

18. This Court need not let the public trust in the electoral process crumble further. Judge Griffin respectfully requests that the Court issue a writ of mandamus to the State Board of Elections, ordering it to enter a final decision on the three categories of election protests before it no later than 5:00pm on 10 December 2024.

RELIEF SOUGHT

Judge Griffin respectfully requests that the Court grant the following relief:

1. Issue a temporary restraining order, preliminary injunction, and/or expedited and final mandamus relief immediately, ordering that the State Board of Elections

enter a final decision on the three categories of election protests before it no later than 5:00pm on 10 December 2024.

2. Grant such other and further relief as the Court deems appropriate.

This the 6th day of December, 2024.

/s/ Craig D. Schauer
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Raleigh, North Carolina 27607
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Counsel for the Honorable Jefferson Griffin

VERIFICATION OF COUNSEL

Pursuant to N.C. Gen. Stat. § 7A-98, counsel submits the following declaration:

I declare under penalty of perjury under the laws of North Carolina that the statements of fact in the foregoing document are true and correct to the best of my knowledge.

Executed on December 6, 2024.


Craig D. Schauer

EXHIBIT A

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN RE PROTESTS OF JEFFERSON
GRIFFIN, ASHLEE ADAMS, FRANK
SOSSAMON, AND STACIE MCGINN

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ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS in a remote meeting conducted via WebEx videoconference on November 20, 2024, upon its own motion, to consider actions by the Board to facilitate review of election protests filed by Jefferson Griffin regarding the Supreme Court Associate Justice contest, Ashlee Adams regarding the NC Senate District 18 contest, Frank Sossamon regarding the NC House District 32 contest, and Stacie McGinn regarding the NC Senate District 42 contest.

Pursuant to N.C.G.S. 163-182.12, the State Board ORDERS as follows:

1. The State Board takes jurisdiction over protests filed with the county boards of elections by Jefferson Griffin, Frank Sossamon, Ashlee Adams, and Stacie McGinn, where those protests allege that ballots were unlawfully counted for one of the following reasons:
 - a. Ballots were cast by overseas citizens who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States;
 - b. Ballots were cast by military or overseas citizens under Article 21A of Chapter 163, when those ballots were not accompanied by a photocopy of a photo ID or ID Exception Form; and
 - c. Ballots were cast by registered voters whose voter registration database records contain neither a driver's license number nor the last-four digits of a social security number.
2. The State Board will schedule a time for preliminary consideration of the protests for which it has taken jurisdiction and will provide notice thereof to the relevant parties.
3. By taking jurisdiction over the aforementioned protests, the State Board is not ruling on the timeliness of any such protests or their facial validity otherwise.

4. The county boards of elections shall retain jurisdiction over all other protests that have been timely filed and shall proceed to consider those protests under Article 15A of Chapter 163 and Chapter 2 of Title 8 of the North Carolina Administrative Code.
 - a. At preliminary consideration, the county board shall advance the protest to a hearing to be conducted at a later date upon proper notice, if the protest was timely filed and otherwise substantially complies with G.S. 163-182.9. Because similar protests were filed in many counties, to ensure uniformity in the process for review of these protests, the county boards shall assume at preliminary consideration that the protests establish probable cause to advance to a hearing, per G.S. 163-182.10(a)(1). The county board shall not consider any evidence outside the protest documents at preliminary consideration.
 - b. When conducting a hearing, the board shall take evidence, which will likely include taking testimony from county board staff as to the contents of official county board records pertaining to the voters whose ballots have been called into question by the protests. At the conclusion of the hearing, the board shall vote on its findings of fact and conclusions of law.
 - c. Each county board conducting a hearing shall memorialize its findings of fact and conclusions of law in a written order, which shall be served on the relevant parties, with a copy provided to the State Board via legal@ncsbe.gov.
5. To facilitate adjudication of these protests, the protesters—Jefferson Griffin, Frank Sossamon, Ashlee Adams, and Stacie McGinn—shall file, by noon on Friday, November 22, 2024, with the State Board and with the respective county boards of elections copies of the lists of voters whose ballots are called into question by each protest filing in Excel file format, with the same labeling as displayed in the PDF versions of the protest filings.
6. For the protests that are now under the State Board’s jurisdiction, the protesters shall file legal briefs, if any, in support of the protests by 5 pm on Wednesday, November 27, 2024. The responding candidates shall file legal briefs, if any, in opposition to the protests by 5 pm on Friday, December 6, 2024.

IT IS SO ORDERED.

This the 20th day of November, 2024.



Alan Hirsch, Chair
STATE BOARD OF ELECTIONS

EXHIBIT B

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

In re Protests of JEFFERSON
GRIFFIN, ASHLEE ADAMS, FRANK
SOSSAMON, and STACIE MCGINN,

Motion to Expedite

The Honorable Jefferson Griffin respectfully moves for the North Carolina State Board of Elections (“NCSBE”) to expedite (1) the Board’s adjudication of Judge Griffin’s pending *Motion to Disqualify Siobhan Millen* and (2) the NCSBE’s adjudication of election protests filed by Judge Griffin over which the Board has exercised jurisdiction in the first instance. In support of this motion, Judge Griffin states as follows:

1. On November 5, 2024, the State conducted a general election for State, local, and federal offices, including Seat 6 of the North Carolina Supreme Court. The Republican candidate in the Supreme Court race is Jefferson Griffin, a judge on the North Carolina Court of Appeals. The Democratic candidate is Justice Allison Riggs, the incumbent for Seat 6.

2. Although Judge Griffin was winning the contest by approximately 10,000 votes on election night, in the days thereafter, Judge Griffin’s lead gradually decreased with the counting of additional votes, and eventually Justice Riggs took a very narrow lead in the race.

3. On November 19, 2024, Judge Griffin requested a recount, which is presently underway.

4. The current vote margin between the candidates is approximately 722 votes.

5. On November 19, 2024, Judge Griffin timely filed over 300 election protests pursuant to N.C.G.S. § 163-182.9 in all 100 North Carolina counties.

6. Judge Griffin's election protests fall into six categories, and allege multiple irregularities or violations of North Carolina election law that affected the outcome of the Supreme Court race, including:

- (a) counting votes in State races from voters whose registration was incomplete and noncompliant with North Carolina law;
- (b) counting votes in State races from individuals who have never resided in the State of North Carolina;
- (c) counting votes in State races from overseas voters who did not present photo-identification in accordance with law;
- (d) counting votes from deceased individuals;
- (e) counting votes from convicted felons who had not had their voting rights restored; and
- (f) counting votes from non-registered voters.

7. The NSCBE took jurisdiction in the first instance over all protests alleging the first three types of challenges, set out above in subparagraphs (a) to (c).

8. On November 26, 2024, Judge Griffin filed a Motion to Disqualify Siobhan Millen based on her marriage to Pressly Millen, who is legal counsel to

Justice Riggs and is a partner at the law firm that represents Justice Riggs before this Board.

9. The issues raised in Judge Griffin's Motion to Disqualify and in his election protests currently with the NCSBE are weighty and demand the parties' and the Board's immediate attention. The Motion and the protests raise substantial questions regarding the impartiality of the NCSBE and the eligibility of individuals who voted in the Supreme Court race, respectively. These matters are of critical importance, and it is imperative that they be handled promptly. North Carolinians deserve to know the rightful occupant of Seat 6 on the North Carolina Supreme Court come January 1, 2025, and delays in resolving the pending disputes will only undermine the public's faith in the elections and our democratic institutions.

WHEREFORE, Judge Griffin requests that the NCSBE expedite a final decision on the *Motion to Disqualify Siobhan Millen* and a final decision on the three types of election protests over which the Board has taken jurisdiction in the first instance, and requests the following deadlines in these important matters:

- (a) Set the deadline for filing any response to the Motion to Disqualify Siobhan Millen as 5:00 PM on December 4, 2024;
- (b) Retain the deadline for any parties to file briefs regarding the protests over which the Board has taken jurisdiction in the first instance as 5:00 PM on December 6, 2024;
- (c) Issue a decision on the Motion to Disqualify no later than December 6, 2024;

- (d) Issue a final written decision on the protests over which the Board has taken jurisdiction in the first instance no later than December 9, 2024.

Respectfully submitted, this the 2d day of December, 2024.

/s/ Craig D. Schauer
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W. Michael Dowling
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Counsel for Jefferson Griffin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed and served this day by email, addressed as follows:

Ray Bennett (ray.bennett@wbd-us.com)
Sam Hartzell (sam.hartzell@wbd-us.com)
John Wallace (jwallace@wallacenordan.com)

Counsel for Allison Riggs

Shana Fulton (SFulton@BrooksPierce.com)
Will Robertson (WRobertson@BrooksPierce.com)
James Whalen (JWhalen@BrooksPierce.com)

Counsel for Terence Everitt, Woodson Bradley, and Bryan Cohn

Brad Hessel (info@electbradhessel.org, bhessel@intelledgement.com)

Pro se

Phil Strach (phil.strach@nelsonmullins.com)

Counsel for Frank Sossaman

This the 2d day of December, 2024.

/s/ Craig D. Schauer
Craig D. Schauer

EXHIBIT C

Craig Schauer

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Friday, December 6, 2024 10:44 AM
To: Craig Schauer; Cox, Paul; John Wallace; NCGOP Legal; Phil Thomas; Ray Bennett; Sam Hartzell; Shana Fulton; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts; Phil Strach; Cassie Holt; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnc.org
Cc: SBOE_Grp - Legal; Bell, Karen B
Subject: RE: State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Paul,

As counsel for Representative Sossamon, we likewise rely on the arguments made in our briefing and waive oral argument in the interest of expediency. We also request to have a final decision by Monday.

Best Regards,



ALYSSA RIGGINS **SENIOR ASSOCIATE**
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From: Craig Schauer <cschauer@dowlingfirm.com>
Sent: Friday, December 6, 2024 10:31 AM
To: Cox, Paul <paul.cox@ncsbe.gov>; John Wallace <jrwallace@wallacenordan.com>; NCGOP Legal <legal@ncgop.org>; Phil Thomas <pthomas@chalmersadams.com>; Ray Bennett <ray.bennett@wbd-us.com>; Sam Hartzell <sam.hartzell@wbd-us.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Shana Fulton <SFulton@BrooksPierce.com>; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts <jordan.koonts@nelsonmullins.com>; Phil Strach <phil.strach@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnc.org
Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; Bell, Karen B <Karen.Bell@ncsbe.gov>
Subject: RE: State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Paul,

Thanks for advance notice of the hearing. As counsel for Judge Griffin, Ashlee Adams, and Stacie McGinn, we waive oral argument in the interest of expediency. We will rely on the arguments in our brief. We also reiterate the request to have a final decision by Monday.

Regards,
Craig Schauer

From: Cox, Paul <paul.cox@ncsbe.gov>

Sent: Thursday, December 5, 2024 5:39 PM

To: Craig Schauer <cschauer@dowlingfirm.com>; John Wallace <jrwallace@wallacenordan.com>; NCGOP Legal <legal@ncgop.org>; Phil Thomas <pthomas@chalmersadams.com>; Ray Bennett <ray.bennett@wbd-us.com>; Sam Hartzell <sam.hartzell@wbd-us.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Shana Fulton <SFulton@BrooksPierce.com>; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts <jordan.koonts@nelsonmullins.com>; Phil Strach <phil.strach@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnnc.org

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; Bell, Karen B <Karen.Bell@ncsbe.gov>

Subject: State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Counsel for candidates involved in protests pending before the State Board:

For your planning purposes, the Chair of the State Board plans to call a meeting of the Board for next Wednesday, December 11, at 12:30 pm, in the State Board Meeting Room, 3rd floor of the Dobbs Building, 430 N. Salisbury, Raleigh, NC. At that meeting, the parties will be allowed to present oral argument regarding the protests pending before the Board. More details will be forthcoming.

Best regards,

Paul Cox

General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

RALEIGH, NC 27611

919.814.0700

www.ncsbe.gov

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